7-18-2016

Harmon v. State Farm Mut. Auto. Ins. Co. Appellant's Reply Brief Dckt. 43802

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOEL W. HARMON and KATHLEEN F. HARMON,

Plaintiffs/Appellants,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Respondent.

Supreme Court No: 43802

Kootenai County Case No. CV-2014-4012

Appeal from the District Court of the First Judicial District
Of the State of Idaho, in and for the County of Kootenai

Honorable Cynthia K.C. Meyer, Presiding

APPELLANTS' REPLY BRIEF

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State Farm argues that "Fatal to Harmons' reasonable expectations is their failure to establish, or even define or describe, what restoring their motorhome to its pre-loss condition means. Without defining 'pre-loss condition' there can be no breach of contract for failing to pay to restore the motorhome to that condition." State Farm then argues whether "pre-loss condition" could mean "straight out of the factory" condition and that it is not reasonable for the Harmons to expect that.

First, the lack of a definition for a contractual term does not mean that the term is incapable of being breached. No authority is cited for such a proposition and one of the primary functions of the Court is to give meaning to undefined terms in a contract. Second, the Harmons don't expect the coach to be returned to factory condition, and even if they did think that, they would not be entitled to it so what they *think* is irrelevant to the interpretation of the word "repair". What the Harmons expected was that their motorhome would be repaired or totaled. No question of fact exists that State Farm knew the dash board could not be repaired and it could not be replaced. Any reasonable person would expect that for State Farm to "repair" a motorhome, State Farm would have to repair the destroyed dash of the motorhome.

State Farm also argues that "There is no requirement that any method to determine the cost to repair to be used in the appraisal process" and that "There cannot be any expectation, reasonable or otherwise, that the cost to repair determined by the appraisal process is anything other than that actual amount of their loss. That amount is binding on the parties **regardless of whether it includes the cost to repair the motorhome to its pre-loss condition.**" State Farm

is arguing that the appraisal process could result in a number that does not repair the motorhome to its pre-loss condition and the Harmons would be bound by that. That is not the case.

Idaho has no case law on this subject, however, other jurisdictions have concluded that the appraisal process must be in substantial compliance with the terms of the policy. If the policy requires an estimate to repair the motorhome to its pre-loss condition, then the appraisers are bound by that or the appraisal can be disregarded.

> Texas courts recognize three situations in which an appraisal award may be disregarded: (1) when the award was made without authority; (2) when the award was the result of fraud, accident, or mistake; or (3) when the award was not made in substantial compliance with the terms of the contract.
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> Wells v. Am. States Preferred Ins. Co., 919 S.W.2d 679, 683 (Tex. App. 1996), writ denied (Aug. 16, 1996)

> Such an award in such a case as is indicated in divisions 1 and 2, 'while a creature of contract rather than of law, may presumably be attacked for any reason which would void a contract, and also for fraud in the arbitrators or in either party in obtaining the award, for a palpable mistake of law, or for a reference of any matter to chance or lot under Code, § 7-111.
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> Jordan v. Gen. Ins. Co. of Am., 92 Ga. App. 77, 77-78, 88 S.E.2d 198, 200-01 (1955)

> 'The failure of appraisers to include in the award all of the property covered by the submission agreement renders the award invalid. Cooley's Briefs on Insurance, p. 6198; AEtna Ins. Co. v. Hefferlin [9 Cir.], 260 F. 695; Graff v. [National Liberty] Ins. Co., 107 Kan. 648, 193 P. 356.

Branch v. Springfield Fire &
Marine Ins. Co. of Springfield,
Mass., 198 La. 720, 728, 4 So. 2d
806, 809 (1941)

At the time that State Farm attempted to tender its required performance under the insurance agreement, the facts as State Farm knew them were that the motorhome could not be repaired at a reasonable cost. State Farm had a contractual right to choose between repair and just paying the actual cash value. State Farm characterizes its May 29, 2014 offer as a repair estimate which included a replacement dash with a cost of $2,000. "State Farm Mutual obtained bids from several RV repair shops and determined that a replacement dash had an estimated cost of $2,000."[1] That sentences should read, "...determined that a replacement dash **if one in fact already existed** had an estimated cost of $2,000." One did not exist and to create one was going to cost $155,000. State Farm clearly breached the terms of the insuring agreement because did not offer to repair the motorhome or to pay its actual cash value.

DATED this 14th day of July, 2016.

ARTHUR M. BISTLINE
Attorney for Plaintiffs/Appellants

[1] Respondent's Brief at 4.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2016, I served a true and correct copy of foregoing APPELLANTS' BRIEF ON APPEAL by the method indicated below, and addressed to the following:

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